IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 91 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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MAHASUKHRAI KESHAVLAL JOSHI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YOGESH S LAKHANI WITH MR HARNISH DARJI for Appellant(s) : 1,
MS DS PANDIT, LD.APP for Respondent-State.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 22/03/2007

CAV JUDGMENT

1. The present appeal is preferred by the appellant-orig.convict (hereinafter referred to as 'the appellant') against the judgment and order of conviction and sentence dated 15th January, 1993, passed by the learned Sessions Judge, Rajkot, in Sessions Case No.173/1991, under Section 374 read with Section 386 of the

Code of Criminal Procedure, 1973. The learned trial Judge at the conclusion of the trial has held the appellant guilty for the offence punishable under Sections 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') and also under Section 506(2) of the Indian Penal Code. While passing the judgment and order of conviction and sentence, the learned trial Judge has observed, “where for the offence punishable under Section 3, 7 of the Civil Rights Act, as it is included under Section 3(1)(10) of the Scheduled Casts and Scheduled Tribes Act and further offence is committed, it is not in the interest of justice to pass any separate order of punishment.” However, the learned trial Judge has given benefit of doubt to the appellant for the offence punishable under Section 504 of the Indian Penal Code. For the sake of brevity and convenience, and to appreciate the arguments advanced by the learned counsel appearing for the appellant Shri Harnish Darji on behalf of Shri Y.S. Lakhani as well as the learned

Additional Public Prosecutor Ms.D.S. Pandit, it would be appropriate to state the basic facts of the case of the prosecution reflected in charge framed vide Ex.1.

2. According to prosecution, on 14th August, 1991, in the afternoon at 03-45 p.m., the appellant made fun of the complainant Shri D.L. Maheshwari, Senior Clerk of the Police Central Motor Transport Workshop (hereinafter referred to as 'the workshop'). But when the complainant asked the appellant not to make fun of him, the appellant started using abusive and obsessive language for the complainant in the Account Branch of the office of the Commissioner of Police, Rajkot. The appellant addressed the complainant by his caste name and the said, “go, go, 'Sala Dheda'”. In vernacular Gujarati language, the word 'Dheda' is being used for undermined low caste or the members of the low caste. 'Dhed' is the name of a community falling in the category of Scheduled Castes so far as the State of Gujarat is concerned. The appellant also asked the complainant to get lost from there, meaning thereby, the Account Branch

where the complainant had gone with one Akbarkhan Husseinkhan, Buckle No.294, who was the writer-Police Constable for the work of said Akbarkhan. The appellant told the complainant, *"This is not your Kachchh, I have taught lessons to them whomsoever has stood against me. If you will speak much, your wife and children will be kept waiting for you and I will get you killed. Nobody will come to know about your whereabouts."* It is alleged that the appellant inspite of knowing that the complainant is the member of Scheduled Caste, he was addressed accordingly and the complainant was insulted and the appellant was making fun of him. The appellant had addressed the complainant with an intention to humiliate him in public and threatened him to be killed. The obsessive language is also used to provoke the situation of the office room where the incident has occurred. It is the say of the prosecution that by this offending act, the appellant has committed offence punishable under Sections 504 and 506 of the Indian Penal Code and also under Section 3(1)(x) of the Act.

3. The learned counsel appearing for the appellant has taken me through the oral as well as documentary evidence led during the course of trial and also the version of the defence-side. It is argued that the judgment and order of conviction and sentence is bad and illegal, and suffers from factual as well as legal errors committed by the learned trial Judge while appreciating the evidence and, hence, it cannot sustain mainly on the grounds mentioned in the memo of the appeal. He has also taken me through various grounds of challenge and also conduct of the learned Presiding Judge, and it is alleged that it has resulted into serious prejudice to the appellant.

4. On the other hand, Ms.D.S. Pandit, learned Additional Public Prosecutor, has submitted that the judgment and order of conviction and sentence is a reasoned order and the evidence of the complainant was found acceptable by the learned trial Judge having sufficient corroboration from two prosecution witnesses

namely the Police personnel who had accompanied the complainant to the Account Branch and for whose work the complainant had gone to the Account Branch and also the person serving in Account Branch i.e. PW-Manoj Devji Maheshwari. The presence of PW-M.D.Maheshwari at the spot of incident was natural and he had no reason to implicate the appellant falsely, especially when he belongs to his own department and caste. There was no reason for the appellant to go there in the Account Branch because it is not his say that he was serving in the Account Branch and the presence of the complainant was there in the room where the incident has occurred. It appears that both were in the Account Branch though they were supposed to be there on their duty and at the place of the work assigned to both of them and in this background, the learned trial Judge has appreciated the evidence. The complainant gets ample corroboration from the complaint which was sent to the Commissioner of Police in writing by post and he has specifically explained as to why the FIR could not be lodged by him immediately after the

incident on 14th August, 1991. Merely because the complainant is an activist in a union of Government employees working in the interest of members of the Scheduled Castes and Scheduled Tribes, his deposition cannot be said to be vulnerable or otherwise doubtful and, therefore, the judgment and order of conviction and sentence should be upheld.

5. To appreciate the rival contentions, it is necessary to evaluate the overall evidence led by the prosecution and mainly by the PW-1-complainant, PW-M.D. Maheshwari as well as PW-Akbarkhan. The PW-1-Dahyabhai Laghubhai Maheshwari i.e. the complainant, has narrated the incident. According to him, on the date of incident, he was serving as a Senior Clerk-cum-Cashier at the Workshop and the appellant is also serving in the office of the Commissioner of Police. He was knowing the appellant as 'Joshibhai' and the appellant was working as a typist in the office of the Superintendent of Police (West). PW-Akbarkhan, Police Constable, was also serving in the said workshop. PW-M.D.Maheshwari was a

Senior Clerk in the office of the Commissioner of Police. According to the complainant, he and PW-M.D. Maheshwari belongs to the same community i.e. Meghwal, and that community is a Scheduled Caste and the appellant was knowing the complainant as a member of the Scheduled Caste. That on 14th August, 1991, at about 03-45 p.m., the complainant and the PW-Akbarkhan had gone to the Account Branch of the their office at Rajkot because PW-Akbarkhan found some error in calculating the amount of his increment and so also the difference in amount receivable by him considering the public holidays. Therefore, the Account Branch was to be informed about preparing the bill of the amount of arrears, and for that work, the complainant and PW-Akbarkhan had gone to PW-M.D. Maheshwari. It is the say of the complainant that billing work of PW-Akbarkhan was with him and when they were talking with PW-M.D. Maheshwari, the appellant had come and asked the complainant as to why he was not going for election propaganda. At that time, the complainant requested the appellant that the appellant may

not make fun of him and should not harass him. In this regard, the appellant had enraged and started insulting the complainant. The complainant requested the appellant not to utter such words. At that time, according to the complainant, the appellant had told the complainant, *“Go go, 'sala dheda'. This is not your Kachchh. I have taught lessons to the persons whomsoever has stood against me. If you will speak much, your wife and children will be kept waiting for you and I will get you killed. Nobody will come to know about your whereabouts.”* It is the say of this witness that PW-M.D. Maheshwari as well as PW-Akbarkhan were present on the spot and they had intervened. The case of this witness is that in the month of May, 1990, he had been to the office of the Superintendent of Police (West), Rajkot, to see Senior Clerk Shri Soni. At that time, the appellant was present and he had teased and told the complainant as to why he is not going for election propaganda and he should go when the election propaganda is going on. At that time also, the complainant had requested the appellant not to harass or

make fun of him as it gives mental tension to the complainant. Even on 14th August, 1991 at 03-45 p.m. the appellant had tried to make fun of the complainant and during conversation insulted him and humiliated him as he belonged to the Scheduled Caste. It is stated by this witness that after the incident in question, he had gone to see Commissioner of Police but he was not available in the office, so he had returned to his work place in the office. After his return, he had received one telephone call informing him that his wife is sick and therefore, he should reach Bhuj. Thereafter, on 14th August, 1991, he had left the office and had gone to Bhuj as his wife was sick and as he had received a phone call from Bhuj. After reaching Bhuj, he had sent a written complaint to the Commissioner of Police by R.P.A.D. The complaint in the present case is proved and tendered by this witness vide Ex.5. The complaint of the complainant was recorded by the Investigating Officer after registration of the offence on 03rd October, 1991. Neither any record from service book or the department has been

produced to show that the complainant belongs to the Scheduled Caste, nor any caste certificate has been produced. Prior to his transfer at Rajkot, the complainant was serving in the office of the Collector at Bhuj. Thereafter, he was transferred to the office of the D.S.P., Bhuj and had served at Bhuj from 1977 to 08th June, 1990. He has accepted that the suggestion made by the defence counsel that he was appointed in Government service as he belonged to the Scheduled Caste. It is in evidence that there is one union of the Government employees belonging to Scheduled Caste and the complainant is the General Secretary of the said Union. PW-M.D. Maheshwari is also a member of the said Union working at Kachchh and this PW-M.D. Maheshwari also belongs to District Kachchh. This witness was also serving in the office of the D.S.P., Kachchh at Bhuj. The complainant has accepted the suggestion that he is the General Secretary of the Union working in the name and style as “Gujarat Karmachari Utkarsh Mandal” at Bhuj. The complainant had sent a copy of the

complaint at various places including the Commissioner of Police. However, he has denied the suggestion that he had sent a copy of the complaint Ex.5 at various places mentioned at the bottom of the complaint but he had mentioned those names only with a view to pressurize the Commissioner of Police to initiate the proceedings against the appellant.

6. Undisputedly, the complainant is serving in the Police Department and was active as General Secretary; and so he must have tackled number of issues involving various types of victimizations of Government employees belonging to the Scheduled Caste. Of course, he has stated nothing either in his deposition or in his complaint, but it is rightly argued on behalf of the appellant that the complainant was aware that the appellant had committed a serious cognizable offence and for which the FIR is required to be registered at the earliest and delay in filing the FIR would come in his way. 14th August, 1991, was obviously a day prior to the National Holiday

i.e. 15th August-Independence Day. In absence of any convincing evidence on record, whether the bare words of complainant should be accepted that only because of ill-health of his wife and on account of urgent telephone call, he had left for Bhuj to enjoy the intervening holidays of 15th August and/or with a view to have deliberations with the members and other office bearers of the said Mandal with whom the complainant was attached. The detailed cross-examination has been made and the defence-side has tried to bring one aspect on record that the complaint Ex.5 is a planned complaint and it would not be safe for the Court to use the said complaint as genuine complaint. Every genuine complaint or delayed complaint should not be used as corroborative piece of evidence, is one of the main arguments advanced by the learned counsel appearing for the appellant. The learned trial Judge has not considered this aspect and has committed error in accepting the bare words of the complainant, whereby he has attempted to explain the delay caused in filing the complaint. There is no corroboration to the

evidence given by the complainant either by way of documentary evidence or any other oral evidence that after the incident he had gone to see Commissioner of Police personally but as he was not present there, the complainant could not meet him and could not ventilate his grievance. The place of incident is not the work place of the appellant, and the Court also shall have to consider the actual subject and topic initiated for discussion by the appellant with the complainant. It emerges from record that the complainant had suffered in past for his involvement in propaganda of election. Whether this proposition placed before the Court is found probable or not that teasing on such or similar subject by other employee can be said to be an attempt to humiliate that employee, that too only because he belongs to the Scheduled Caste, was also a question.

7. According to the complainant, he had not gone to the Police Station because according to him, the Commissioner of Police was required to be informed first. In the cross-

examination, he has accepted that he had returned to his work place between about 04-00 p.m. and 04-45 p.m. and had informed about incident to In-charge Police Inspector Shri Patel and Shri Patel had asked him to inform the Commissioner of Police as the incident has taken place in the office of the Commissioner of Police. He had admitted that after this advice also, he had not tried to draft out an application (complaint) addressing the Commissioner of Police. He was the Senior Clerk and was also dealing with various correspondences. The workshop does not have an independent accountant and one Shri M.K. Sanghvi was looking after accounts of their branch. Neither this M.K. Sanghvi has been examined nor any document is produced on record which can substantiate the say of the complainant about cause for which he had gone to the place where PW-M.D. Maheshwari was sitting. According to this witness, there is no movement register in their office. However, he had gone to Shri M.D. Maheshwari with PW-Akbarkhan after taking permission. The papers relating to increment, etc. were being sent

through the office of the Dy.S.P. and he was not directly concerned with the accounts relating to increment or leave difference, etc. but he had gone for the work of PW-Akbarkhan. It has come on record (paragraph no.13 of the cross-examination) that he was transferred first from Bhuj to Rajkot and thereafter PW-M.D. Maheshwari was also transferred. Of course, he has denied the suggestion that both of them were staying in the same house. Initially he was residing in the Quarter No.128 in the Mount Police Lane. It has also come on record that whether any other person i.e. clerks and persons serving in the office, other than PW-M.D. Maheshwari were present at the time when the alleged incident had taken place or not. It appears that there was one Head Clerk, Assistant Accountant, Senior Clerk, etc. were present there, and the Head Clerk was one Shri Sonpal. He has admitted that he had not talked on that day i.e. 14th August, 1991, with the Accountant. He was not even knowing the name of the person as to who was the Accountant. According to the complainant, PW-M.D.

Maheshwari was from Kachchh and was known to him and he had talked with the said PW-M.D. Maheshwari about the work of PW-Akbarkhan. The complainant has admitted that in the month of May, 1990, when the discussion had taken place, he had tussle with the appellant and at that time, he had neither discussed nor disclosed that he (complainant) belongs to Maheshwari Meghwal caste (i.e. the caste included in the Schedule). It appears from paragraph nos.16 and 17 of the cross-examination that the complainant was transferred from Bhuj for his involvement in the election propaganda, and on account of his involvement in political activities, that too during election, an inquiry was initiated against the complainant and Dy.S.P. had inquired into the matter and on account of the same, he was transferred from Bhuj to Rajkot. It is the say of this witness that whomsoever talks about election of 1990, he considers that type of talk as his insult. The other grievance of the complainant is that the appellant is in habit of teasing co-employees. He has stated that the appellant has teased so

many persons and he does not recollect those names. It is alleged that the appellant is in habit of making false allegations and writing applications against the police personnel and, therefore, the police personnel are afraid of the appellant. According to him, he is not in a position to give the names of all those persons because it may create animosity between the complainant and those persons, and the appellant is behaving as a king in the office. According to this witness, the appellant was promoted to the post of Senior Clerk but he had refused to accept the promotion under apprehension that as he (appellant) had bad habits and if he accepts promotion, somebody may implicate him. So under fear, the appellant had not accepted the promotion. Of course, he has denied that he is not a member of the Scheduled Caste. This witness has, of course, denied that no departmental proceedings were initiated against him in paragraph no.16 of his deposition. However, in paragraph no.18, he has stated that in reference to a proceeding drawn for the meeting of Promotion Committee,

some proceedings were initiated against him and one another proceeding initiated was in reference to one account. Of course, he has denied that he was punished in those proceedings. Whether this is a case where the Court can confirm the judgment and order of conviction and sentence on the sole evidence of the complainant, is a question. It is true that there is no need to have corroborative piece of evidence and on the strength of the evidence of one single witness, the appellant can be held guilty. On plain reading of the evidence of the complainant, the Court is of the view that the case of the prosecution and especially the oral evidence of the complainant needs a close scrutiny, and therefore, the evidence of PW-Akbarkhan as well as PW-M.D. Maheshwari shall have to be appreciated.

8. PW-Akbarkhan was undisputedly working in the workshop and he was a Police Constable. It is not possible for this Court to accept that if any serious incident which can be said to be a cognizable and non-bailable criminal offence

would have been committed, whether this PW-Akbarkhan would have separated from the complainant immediately after the incident or not. At least, he would have returned at the workshop where the complainant was working. There is no cogent evidence about the distance between the two places i.e. alleged place of incident and the work place of the appellant. But it is clear that both these places and premises are different. It may be the same building or same compound. When the complainant had taken cause of this PW-Akbarkhan, the said PW-Akbarkhan would have remained in company of the complainant at least for some time. In this background, the evidence of PW-Akbarkhan is required to be looked into.

9. Shri M.D. Maheshwari has been examined as PW-3. According to this witness, the complainant as well as PW-Akbarkhan had been to him for one inquiry and to know about who is handling the computation of increment and when this witness was talking with them, the appellant who was a typist came there and asked the

complainant as to why he was not going in the election propaganda, and when he wanted to go and in that way, he was making fun of the complainant. At that time, the complainant had told the appellant that he should not make such fun and should not give mental stress to the complainant. In response thereof, the appellant turned angry and told the complainant, *“Go go, 'sala dheda'. This is not your Kachchh. I have taught lessons to them whomsoever has stood against me. If you will speak much, your wife and children will be kept waiting for you and I will get you killed. Nobody will come to know about your whereabouts.”* The appellant had also given vulgar abuses and therefore, he (PW-M.D. Maheshwari) and PW-Akbarkhan intervened and the appellant was asked to calm down. Thereafter, they had gone away from there. This sentence appears to be applicable to all the three witnesses i.e. PW-Akbarkhan and complainant on one side and the appellant on the other. According to this witness, the Police had recorded his statement on 15th October, 1991. In the cross-examination, this

witness has accepted that prior to his transfer to Rajkot, he was serving in the office of the DSP at Bhuj and the complainant was also serving there, and both of them belong to same caste and he was not dealing with the work as to the increment of a person serving in the office of the Commissioner of Police. The complainant and PW-Akbarkhan had been to him and they were there for about 10 minutes of the alleged incident. This witness has stated that there are tables of the employees to his both sides i.e. left and right sides, and in his room 9 (nine) other clerks are also sitting, and abuses were given for about 15 minutes. However, he has denied that during this hubbub anybody sitting in the room would have come to intervene. Of course, in response to the query raised, this witness has not said in his deposition as to whether he had given any guidance to the complainant and PW-Akbarkhan in the said period of 10 minutes since they were sitting, or not. He has also not stated that after the incident the complainant had attempted to see the Commissioner of Police or he had informed this

witness that he is going to Bhuj on account of a telephonic message received about ill-health of his wife. According to this witness, the appellant is serving in the office of the DSP. The office of the Commissioner of Police and DSP are in different buildings and both the offices are at some distance, and if one goes on foot then one would take about 2 to 3 minutes to reach to the office of the DSP from the office of the Commissioner of Police and vice-a-versa. Neither the complainant nor this PW-M.D. Maheshwari has stated as to why the appellant was there in the office of the Commissioner of Police though his work place is away at some distant place, that too in other building. Of course, there is no cross-examination on this point. The distance between the workshop and the room where the PW-3 (M.D. Maheshwari) was having his table has come on record from his deposition. The plain reading of the evidence of this witness gives an impression that he is an interested witness being friend and caste fellow of the complainant, and it is clear from the evidence of this witness that he and complainant are

co-employees in the Police Department since years. After the transfer of the complainant, this witness PW-M.D. Maheshwari was also transferred to Rajkot. None of these witnesses has actually said as to what type of abuses were given by the appellant. The say of this witness also gives an impression that there was exchange of abuses because the witness has stated that giving of abuses lasted for about 15 minutes. The place where about 9 to 10 clerks were sitting including PW-M.D. Maheshwari, whether the Head Clerk sitting in the same room would tolerate the abuses uttered in the very room for 15 minutes, is also a question. Comparatively, 15 minutes is a very long period. So it can be said that PW-Akbarkhan and complainant had remained in the said room for more than about 25 minutes. The witness has stated that the discussion and the abuses continued for about 15 minutes. This clear indication that abuses must have been exchanged for long. When the presence of the complainant as well as the appellant in the room where incident had taken place appears to be unauthorized presence because there is

nothing on record to show that either the complainant or the appellant had been there in the room of the office of the Commissioner of Police for any genuine cause or with permission of their superior officer. PW-3-M.D.Maheshwari has not stated in his examination-in-chief that the complainant had been to him to inquire about computation of increment on behalf of PW-Akbarkhan or both of them came to him for the work of PW-Akbarkhan. He has also not stated that the grievance of PW-Akbarkhan was that there is some error in calculating the increment or the amount of increment or in computing the amount receivable against the duties performed on public holidays. Of course, this witness has corroborated the complainant substantially on the point that the complainant was addressed by name of his caste and was asked to get lost from the spot. For the sake of argument, if it is accepted that the complainant may have given some cause resulting into anger, even then the appellant ought not to have addressed the complainant by his caste name. Here it is pertinent to note that the learned trial Judge

has acquitted the appellant from the charge of offence punishable under Section 504 of the Indian Penal Code, and has given him benefit of doubt. So it can be inferred that the learned trial Judge was not satisfied about the essential ingredients which are required to be proved with a view to bring home the charge of offence punishable under Section 504 of the Indian Penal Code. The ingredients are that the accused should have insulted any person intentionally. In the present case, complainant is the person who has been insulted, and the accused thereby intended to provoke him i.e. the complainant, and the accused was knowing that such provocation was to instigate that person to commit breach of piece or to commit any other offence. On plain reading of the judgment, there is no clear finding that out of the basic three ingredients which ingredient was found missing or evidence qua that ingredient was not sufficient. To teach a co-employee, that too for the event that had occurred in past qua an employee who is being teased, by itself would not be sufficient to infer insult and it would

be risky to say that the idea in the mind of a person teasing is nothing but either to insult the other employee whom he is teasing or to undermine his presence or personality. When it has come on record that the appellant was punished and transferred to District Rajkot from Kachchh for his political affiliation and involvement in the election propaganda and was also subjected to some other departmental proceedings without anticipating a serious turn in the conversation, the attempt of the appellant to make comment towards the complainant asking him as to when he was going for election propaganda, would not make him liable for the charged offence. It is rightly argued by Shri Harnish Darji, learned counsel appearing for the appellant, that PW-1 complainant and PW-3 M.D. Maheshwari being persons interested in the result of the case and being friends, the learned trial Judge ought to have insisted for independent corroboration. It would be risky to consider the evidence of PW-M.D. Maheshwari as reliable corroborative piece of evidence qua the words uttered by the appellant.

10. At this stage, it is necessary for this Court to consider the strength in the evidence of PW-2-Akbarkhan Ex.8. PW-Akbarkhan at the relevant point of time was serving as a Writer-Police Constable in the stores department situated in the office of the Commissioner of Police, Ahmedabad. According to this witness, the incident has occurred at about 03-45 p.m. on 14th August, 1991 in the Account Branch. He has stated that he and Senior Clerk Shri Maheshwari i.e. the complainant, working in his office had gone to the office of the Commissioner of Police for the work of account, and his work was to be done on the table of PW-M.D.Maheshwari. The said PW-M.D. Maheshwari has denied that the work related to account or increment, etc. was not to be done by him. So the evidence of PW-Akbarkhan is in conflict on this aspect. Whether this conflict is a major or minor is a question of appreciation, but at least it can be said that on this point both these witnesses do not corroborate each other. At the most, it can be said that PW-Akbarkhan and

PW-M.D. Maheshwari are consistent to the effect that the complainant and PW-Akbarkhan were there in the Account Branch for some work relating to account. According to PW-Akbarkhan, when he and complainant were talking with PW-M.D. Maheshwari, the appellant came there and he (appellant) was standing with him. But he has not stated anything as to why the appellant was standing with him (PW-Akbarkhan). The case of the prosecution is consistent that the atmosphere became polluted only because the appellant started teasing the complainant by referring to the election and its propaganda; and one or two sentences were uttered or asked. As discussed earlier, it cannot be said to be either insulting or undermining a person, mainly an employee of the same campus and department. So the inconsistency in the actual language used is required to be focused. In ACB trap cases, few exchange of words immediately prior to passing of bribe amount are being given due weightage when it is appreciation of two material witnesses i.e. complainant and the panch i.e. shadow witness. Of course in the present case,

PW-Akbarkhan was not the shadow witness, but if the complainant had really accompanied PW-Akbarkhan for the work of PW-Akbarkhan and that work was to be done by PW-M.D. Maheshwari, as stated by PW-Akbarkhan, he may not have missed the actual conversation that had taken place between him and the complainant, and also between him and PW-M.D.Maheshwari, and in the same way, the exchange of words between the appellant and the complainant. This witness has neither stated anything about the conversation between him and PW-Maheshwari nor between the complainant and PW-M.D. Maheshwari. Of course, there is no clear mismatch but there is some difference qua the sentences allegedly uttered by the appellant while teasing the complainant referring to general election and its propaganda. It is true that these three witnesses are consistent that the appellant had asked the complainant referring to his enthusiasm in participating in general election propaganda. It is difficult for this Court to infer that PW-M.D. Maheshwari may not be knowing about incident that had allegedly

occurred in May, 1990 between complainant and the appellant. But for the reasons best known to him, he has not uttered anything qua that event. It is not even the say of the complainant that on that day though there was tussle between him and the appellant, for that incident he had attempted to approach his superior officer either informing them about the incident verbally or in writing at that point of time. According to this witness, all the clerks sitting in the very room were present and he and PW-M.D. Maheshwari got separated the appellant and the complainant. According to PW-Akbarkhan, he had not asked the complainant to leave the spot otherwise he would have stated so. In the cross-examination, this witness has stated that his statements were recorded twice. That on 05th October, 1991, his statement was recorded for the second time. Prior to that on 16th August, 1991, the Dy.S.P. had recorded his statement. But this witness has contradicted the complainant on some aspects. This witness has denied that the account work in his office was done by one clerk M.K.Sanghvi. His office

maintains movement register. However, they have taken oral permission from their superior Shri Patel. It appears that this officer Shri Patel is the same person who was informed after the incident by the complainant. The PW-Akbarkhan has admitted that no entries were made in the movement register of his office and because of his transfer from 'C' Division Police Station to Workshop, some error had cropped up in calculating his increment for the period from 1988 to 1990. In the cross-examination this witness has admitted that the actual work which is known as sheet-work was being done by one Shri Detroja. However, neither PW-M.D. Maheshwari nor the complainant has referred to the name of Shri Detroja in their depositions and there is nothing on record to show that none of these two had been to Shri Detroja, if they had really gone there for their work of preparation or in reference to increment sheet. It has come on record that the appellant was not present in that room when they had reached to the table of PW-M.D. Maheshwari. It has also come on record in the cross-examination of this

witness that the appellant had entered in the room subsequently and this witness was not knowing as to why the complainant gets annoyed if he is asked about the general election and its propaganda. According to this witness, the incident in question continued for about 5 (five) minutes. Nobody had gathered from the adjoining table or from the office. Of course, this witness has denied that as the complainant had accompanied him for his work, he is supporting the version of the complainant. Shri Harnish Darji, learned counsel appearing for the appellant, has drawn the attention of the Court that this witness had some ill-feeling on account of some earlier conduct of the appellant. In paragraph no.5 of the deposition of this witness, he has admitted that when he was at Pratapnagar Police Station, he had prosecuted the appellant for traffic offence and for that the appellant had given a written complaint to Commissioner of Police that this witness is making false entries. Of course, this witness has shown his ignorance about the grievance expressed by the appellant to the Commissioner

of Police about traffic case registered against him. It appears that the appellant may have a quarrelsome nature and tendency to tease the person serving in his own department, but this by itself would not go against the appellant as the evidence as to the character is inadmissible. The evidence as to the character of a person mainly of the appellant, is not relevant, unless it is statutorily permitted. So it is not possible for this Court to draw any inference against the appellant. On the contrary, it appears that the answer given by PW-Akbarkhan as to existence of some ill-feeling between him and the appellant, and the fact that the complainant was helping hand to this witness because of his past experience, he may have supported the complainant. The crucial argument advanced by Shri Harnish Darji is that when this witness PW-Akbarkhan has accepted that the statement relied upon by the prosecution dated 05th October, 1991, was his second statement, then why the first statement recorded in reference to the very incident was neither given to the appellant nor the same

was made a part of the charge-sheet, otherwise the appellant could have pointed out improvements made by this witness. Of course, this argument has some logic but in that case, the appellant ought to have demanded the copy of the earlier statement of the said witness and could have sought for an adjournment during trial. In response to the query raised by the Court, it is submitted by Shri Harnish Darji, learned counsel appearing for the appellant, that the Court was in haste to conclude the trial. But at least the appellant was not prevented in applying for adjournment giving this cogent reason. To satisfy the Court Shri Harnish Darji has pointed out the list of documents which were supplied to the appellant along with the charge-sheet from the record of the trial Court and this list does not incorporate the earlier statement of the PW-Akbarkhan. No panchnama of the scene of occurrence has been drawn. There is some force in the say of Shri Harnish Darji that as per PW-5 Police Inspector Shri Jandin Jayantilal Bhatt, about 10 to 11 persons were sitting in the Account Branch and the statements of some

of the persons sitting in the room namely Gopal Tejumal, Mahesh Mulji, Manish Kumar Nagjibhai, Mansinh Gangaji and Jagdishchandra Soni, were recorded by him. He has admitted that he has not collected any documentary evidence to prove that the appellant belongs to Scheduled Caste. It is relevant and requires to be proved as per the Rule of best evidence that the victim belongs to a particular Caste and that caste is a Scheduled caste in the State of Gujarat. It is also not in evidence that out of the clerks whose statements were recorded, any one belongs to either Scheduled Caste or Scheduled Tribes, but none of the witnesses whose presence was very natural in that room, has been examined. Of course, the appellant has denied the incident, but according to Shri Harnish Darji, this is not a case of total denial. The denial is qualified and such qualified denial is permissible to an accused while carving out a defence and the say of the appellant is that the incident as narrated by the complainant and stated by PW-Akbarkhan and PW-M.D. Maheshwari has not occurred. There may be

some incident of teasing by the appellant to the complainant and may have resulted into some hot exchange of words, but it appears that as the appellant had also teased the complainant in past, the complainant must have decided to teach a lesson to the appellant by converting the incident to an incident carving out a serious case. Perhaps PW-Akbarkhan may not have supported the complainant in his initial version to the effect that the appellant had insulted and undermined the complainant by addressing him with the name of his caste; otherwise there was no reason for the prosecution to refer to earlier statement of this witness. Shri Patel, who was informed first immediately after the incident and who had directed the complainant to see the Commissioner of Police, has not been examined, otherwise he could have corroborated the complainant by narrating the story told to him by the complainant. The disclosure of events by the complainant to Shri Patel was the first disclosure even as per the say of the complainant. In this background, the evidence was required to be

appreciated by the learned trial Judge. But Shri Patel has not been examined. The learned trial Judge has not considered the aspect whether this is a case wherein the independent witnesses, who are not interested in any way in the result of the case, could have been examined or not, and if the answer is in affirmative, what would be the resultant effect of non-examination of such witness or witnesses ? The Court is aware that merely because a person witness is interested, evidence of such witness should not be either discarded or ignored, and one interested witness also can corroborate the other similar witness. But while weighing with the quality and quantum of witness, if the Court finds that the prosecution has intended to withhold the independent witness by dropping certain witnesses, it should not link the appellant with the crime at least by observing that there is no sufficient evidence to link the appellant with the crime. In such or similar fact situation and legal contingencies, the appellant should be given benefit of doubt.

11. Any one can disclose a cognizable offence and non-bailable offence, and it is not necessary that the victim only should go to the Police Station or to the Court for filing the complaint. When PW-M.D.Maheshwari was known and comparatively close to the complainant, he could have lodged the complaint. PW-M.D. Maheshwari has not even attempted to approach the Head Clerk sitting in the room expressing grievance in writing that the abuses given to the complainant are implied result of him (PW-M.D.Maheshwari) also because it has come on record that both of them belong to the same community and the allegation of the complainant is that the complainant was humiliated and/or insulted or teased only because he was a member of the Scheduled Caste. The conduct of this PW-M.D.Maheshwari as well as the complainant immediately after the alleged incident, takes this Court to an inference that a formal complaint ought to have been made in writing to immediate superior at least. So the contents of such application being relevant could have been looked into while appreciating the version of

two main witnesses i.e. complainant and PW-M.D. Maheshwari. Of course, there is evidence of PW-Akbarkhan but as discussed earlier compared with other witness who could have been examined and whose presence at the spot of the incident was natural have not been examined. When there is element of some inconsistency qua the sequence of events and the actual words uttered by the appellant at the relevant point of time, takes this Court to a conclusion that the version of PW-Akbarkhan would not make the prosecution case full proof and beyond reasonable doubt.

12. The prosecution was supposed to establish one more aspect to bring home the charge that the complainant was teased on account of his past conduct as a Government employee for participating in a general election propaganda, which was only because he belongs to Scheduled Caste. When it is in evidence that the appellant was in habit of making fun or he was playing with co-employees by making fun and in past he has behaved with so many co-employees in similar way, whether it would

be proper for this Court to accept the argument advanced by Ms.D.S.Pandit, learned Additional Public Prosecutor, that the complainant was humiliated only because he is a member of the Scheduled Caste. It is not even suggested by any prosecution witness that when the complainant was teased by referring to the general election propaganda, there was nothing like election either in the Rajkot Municipal Corporation or other elections of civic bodies in the District or Assembly Elections. On the contrary, it has come on record that the appellant referred to the atmosphere of election. So for the sake of argument, if it is accepted that the appellant had teased the complainant, it cannot by itself prove the fact that he was teased only because he is a member of low caste, or otherwise the appellant would not have teased him at all. As discussed earlier, it is admitted that the complainant was transferred on account of such allegations when he was serving with the office of the DSP, Bhuj. Thereafter, PW-M.D.Maheshwari was also transferred. When it comes to inter-district

transfer or inter-zone transfer in the case of Class-III or Class-IV Government employees, one may start presuming that there should be some special cause and in the present case, the complainant himself has admitted that there was allegation against him that he had participated in election propaganda during general elections.

13. When the complaint in the present case is a typed one and the same was despatched to the Commissioner of Police by R.P.A.D. and the complainant was actively associated with one association of Government employees belonging to Scheduled Caste, the Court while accepting the contents of the application as sufficient corroborative piece of evidence at the time of evaluating the evidence of the complainant, needs to be conscious. On the contrary, on plain reading of the evidence of the complainant and the discussion made hereinabove about the evidence, makes this Court to believe that the complaint should be treated as a belated complaint and also the complaint that may have been drafted with the

guidance of a crafty person; it may be a joint venture. The complainant could have brought the original draft written by him that might have been given by him to the typist and there was no need for the complainant to send copies of the complaint to number of authorities, he could have sent it to the Commissioner of Police and directly to the Police Inspector of the concerned Police Station, where he could ave lodged the FIR. This conduct of the complainant affects the transparency required. The type of prejudice the complainant was carrying on as to the date of incident is already there on record in the background of the alleged incident of May, 1990. This Court is of the view that if complaint is prepared or dictated with due deliberations and/or it is a delayed complaint, then such a complaint normally should not be considered as corroborative piece of evidence at the time of evaluating the evidence of the complainant. So it is difficult for this Court to accept the say of the learned Additional Public Prosecutor that the complainant has been corroborated by the FIR. In such a situation,

whether the words actually uttered by the complainant during his deposition as to in what language he was addressed; at what point of time, and what was the sequence and cause; and when he had put curtain over his conduct, it is doubtful that the words uttered addressing the complainant as a member of the low caste or addressing him by caste ought not to have been accepted as gospel truth because there is no independent and trustworthy corroboration to this part of evidence of the complainant and the alleged corroboration is also of very weak nature and that too by the persons having interest in the result favourable to the complainant. It is not the case of the prosecution that no evidence of any independent witness was available when more than one independent witnesses could have been cited and examined, the prosecuting agency cannot be said to have been acted fairly with the appellant. It is true that the learned Public Prosecutor could have dropped other witnesses and it is not necessary to examine all such witnesses because no repetition of similar evidence is required.

But neither the learned Public Prosecutor has attempted to call those witnesses whose presence was indirectly established by the complainant in the very room where the incident occurred, nor the learned trial Judge has taken care to intervene at the time when the heat was generated, in exercise of powers vested with the Court under Section 311 of the Commissioner of Police. This Court and the Apex Court has time and again advised that the trial is ultimately a fact finding mission and if required, learned trial Judge with a view to do substantive justice and to prevent miscarriage of justice, should exercise powers vested with the Court under Section 311 of the Code of Criminal Procedure, 1973. Absence of such exercise by learned Public Prosecutor as well as by the learned Presiding Officer of the Court makes the corroborative piece of evidence led by the prosecution in the present case a very weak and inadequate piece of evidence.

14. So for the sake of argument if it is accepted that the appellant must have tried to tease or

to pass an comment in presence of or addressing the complainant asking that this time whether he is to participate in the election propaganda or not, then such a conduct of the appellant would not make him liable for criminal wrong. Such a conduct may not be equated with descent or anticipated conduct. But it would be risky for the Court to say that the comment was passed only because the complainant was a member of the Scheduled Caste, especially when it is in evidence that the appellant was having such a temperament or habit qua all other employees. In the case of ***Ramdas and others v. State of Maharashtra, reported in 2007(2) SCC 170***, the Apex Court has observed in paragraph no.11 as under :

> *"**11.** At the outset we may observe that there is no evidence whatsoever to prove the commission of offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The mere fact that the victim happened to be a girl*

belonging to a Scheduled Caste does not attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to Pardhi community, there is no other evidence on record to prove any offence under the said enactment. The High Court has also not noticed any evidence to support the charge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was perhaps persuaded to affirm the conviction on the basis that the prosecutrix belongs to a Scheduled Caste community. The conviction of the appellants under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 must, therefore, be set aside."

15. In the same way, in the case of ***Arvind Lakhmanbhai v. State of Gujarat, reported in 2006(2) GLH 714***, while dealing with Criminal Appeal against the judgment and order of conviction and sentence for the offence

punishable under Section 302 of the Indian Penal Code, this Court has observed, *“Despite a close scrutiny, we are unable to fine any material to show that the offence was committed by the appellant on the ground that the deceased was a member of Scheduled Castes or Scheduled Tribes.”* Of course, the Court was dealing with the provisions of Section 3(2)(v) of the Act. So the evidence in the present case that the appellant was knowing about the caste itself would not make him responsible. In the above cited decision in the case of *Arvind (supra*), the appellant was aware about the caste of the victim that he belongs to Scheduled Caste. Even while dismissing the appeal against the judgment and order of conviction recorded qua the offence punishable under Section 302 of the Indian Penal Code, the Court acquitted the appellant from the charge of offence punishable under the provisions of the Act. In the present case, it has emerged that the complainant has no clear and transparent service track record and it is also clear that at the time when the heat was generated between the appellant and the

complainant, the appellant had neither insulted nor abused PW-M.D. Maheshwari. Though the complainant and PW-M.D. Maheshwari, both are of the same caste. The appellant had teased the complainant for the similar reason in past also and again he committed the same wrong as there was atmosphere of election. It is the experience of the society that some persons have tendency to tease the person who gets teased. In this totality of circumstances, the learned trial Judge ought not to have linked the appellant with the crime punishable under Section 3(1)(10) of the Act.

16. There is no evidence worth the nature under which the appellant could have been convicted for the offence punishable under Section 506(2) of the Indian Penal Code. Section 503 defines a criminal intimidation. The appellant is contributed an act of administering the threat, simultaneously saying that, *“This is not your Kachchh”*. These words create shadow of doubt about the version of the complainant and the other

witnesses. Normally, if such a sentence is uttered, it is probable that it must be in reference to arrogance shown or threat contributed. Each hot exchange of words would not fall under the definition of the criminal intimidation defined under Section 503 of the Indian Penal Code. It is settled that for making out a case of criminal intimidation under Section 506(2) of the Indian Penal Code, it must be established that the accused had an intention to cause an alarm to the complainant. Mere threat given by the accused, not with an intention to give an alarm to the complainant but with a view to deterring him from interfering with what the accused believe either about his right or other status, would not constitute an offence of criminal intimidation. IT is settled that delay in lodging the complaint for criminal intimidation may reasonably operate as reasonable doubt entailing acquittal.

17. One more aspect is also brought to the notice of the Court by Shri Harnish Darji, learned counsel appearing for the appellant, by

referring to Rojnama from the original proceedings. It is pointed out by Shri Darji that the charge in the present case was framed by the learned Sessions Judge, Rajkot on 28th August, 1992. Thereafter, the deposition of the complainant came to be recorded on 17th September, 1992 in part. On 17th September, 1992 itself, as the Court time was over, the deposition of the complainant remained incomplete. However, cross-examination could resumed only in the month of January, 1993 because meanwhile the complainant had orally requested the Court for adjournment on 29th September, 1992 and thereafter, he had remained absent for the reasons best known to him during incomplete deposition. The learned trial Judge was compelled to issue witness summons to the complainant. The Court could not receive the witness summons served on the complainant though the complainant was a Government employee. Ultimately, the complainant appeared after two other adjournments on 25th November, 1992. Thereafter, the case came to be transferred to the learned Additional Sessions Judge, Rajkot.

When the matter was listed for recording of evidence, the complainant was again absent on 07th December, 1992. The application was submitted by the complainant and the matter was adjourned to 14th December, 1992, but before the learned Presiding Officer could resume hearing and record the cross-examination of the complainant, the learned Sessions Judge withdrew the case vide Office Order No.3175/92 and the case was transferred to the main Court. Thereafter, on 04th January, 1993, as Rajkot Bar Association had decided not to work, the matter was adjourned on the next day i.e. 05th January, 1993, and on 05th January, 1993, the Court could complete the cross-examination of PW-1 complainant. On that day, the other three prosecution witnesses also came to be examined and the matter was adjourned to 07th January, 1993. On 07th January, 1993, the Court heard the arguments and the judgment was pronounced on 15th January, 1993. Therefore, the case which was sent for trial to the Court of Additional Sessions Judge, Rajkot and complainant was to remain present for further cross-examination

as his deposition was to be completed, whether the trial was required to be transferred by way of an administrative order and when the complainant himself had requested for adjournments for long and had not even cared to appear, the prosecution ought not to have made any haste. One another point pressed into service, of course, has not been pressed seriously by Shri Harnish Darji, but it would not be proper for this Court to even not to refer to this point whereby Shri Darji has submitted that number of cases which can be said to be part-heard were called to the main Court and certain complaints to the administrative side even were made to the High Court. But this Court is of the view that such an error would not or should not weigh with the Court. It is settled that a part-heard case should not be transferred by the learned Sessions Judge by way of an administrative order, unless the circumstances are so compelling like request by the learned Presiding Officer himself for withdrawal of the case.

18. For short, the aforesaid appeal is required to be allowed. This Court is inclined to accept the arguments advanced by Shri Darji that the learned trial Judge has grossly erred in appreciating the evidence and has ignored the material relevant aspects while recording the conclusion that the prosecution has brought the charge home beyond reasonable doubt. This is a case wherein the appellant-orig.accused deserves benefit of doubt and he ought to have been given benefit of doubt by the learned trial Judge.

19. In view of above observations and discussion, the present appeal is hereby allowed. The judgment and order of conviction and sentence dated 15th January, 1993, passed by the learned Sessions Judge, Rajkot, in Sessions Case No.173 of 1991, is hereby quashed and set aside. The appellant-orig.accused is hereby ordered to be acquitted from all the charges levelled against him in respect of the offence in question by giving him benefit of doubt. The bail bond executed by the appellant shall stand discharged. The amount of fine, if any

paid, be refunded to the appellant on proper identification.

20. Before parting with the judgment, this Court would like to observe that the benefit of doubt given to the appellant should not come in the way to the departmental proceedings, if ultimately the department so desires to initiate departmental proceedings against the appellant about his conduct in the office as a Government employee, because the norms of deciding the departmental proceedings are materially different than the criminal proceedings.

(C.K. Buch, J)

Aakar